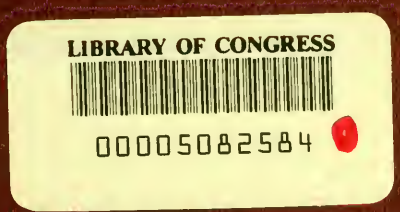

SPEECH

OF

MR. RIVES, OF VIRGINIA,

IN SUPPORT OF MR. BENTON'S

EXPUNGING RESOLUTION.

IN SENATE, MARCH 23, 1836.

WASHINGTON:
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1836.

SPEECH.

On Mr. Benton's Expunging Resolutions.

In Senate, March 28, 1836.

Mr. CLAYTON moved that the resolutions of the Senator from Missouri should be taken up, in order that the discussion upon them might proceed. The motion being adopted,

Mr. RIVES then rose, and addressed the Senate, in substance, as follows:

If no other gentleman, Mr. President, be disposed to do so, I will avail myself of the opportunity afforded by the motion of the Senator from Delaware, to trouble the Senate with some remarks on the subject now under consideration. In doing so, I do not propose, at this time, to go into the wide field of diversified and interesting matter opened for discussion by the resolutions of the Senator from Missouri. My purpose will be to confine myself, at present, strictly to the constitutional question which has been raised as to the power of this body to expunge from its journal an entry heretofore made upon it, trusting to the indulgence of the Senate, in a future stage of the discussion, to be permitted to present my views of the other highly important questions involved in the general subject. I propose thus to limit my remarks for the present, because the constitutional question is naturally and properly preliminary to all the rest, standing first in the order of discussion, as well as first in importance; for however justly obnoxious I deem the resolution of March, 1834, to the various exceptions which have been taken to it, it certainly ought not to be *expunged*, unless under the constitution we have the rightful authority to do so. It seems proper to confine my remarks, for the present, to this single view of the subject, for the further reason that, as yet, the able and lucid arguments of the Senator from Missouri on the other branches of the discussion, have remained without any answer, or even an attempt to answer them.

A free people, Mr. President, and especially the enlightened people of this country, are naturally and wisely jealous of the observance of their fundamental law, and acutely sensible to any violation, actual or meditated, of its provisions. Hence it is that, in the warfare of parties, appeals are so frequently made to this patriotic instinct in the public mind, and alarms, often groundless and artificial, attempted to be raised in regard to the security of the constitution. Hence it was, I presume, that in the memorable contest of which this chamber was the theatre two years ago, the President was denounced as an usurper of ungranted power, as a violator of the constitution and the laws of his country; when if all that was alleged by his adversaries could be sustained, it would have made but a case of the misapplication or abuse of power granted both by the constitution and the laws. Hence it is, too, I suppose, that on the present occasion a *new panic* is attempted to be raised by holding up the image of mutilated records and a violated constitution, and that the exercise of a lawful discretionary power over their own journals and proceedings, which has been known and admitted since the origin of legislative bodies, and is familiar in parliamentary practice, wherever such bodies exist, is represented as something monstrous, iniquitous, and even felonious. If gentlemen expect, thus, by the use of strong language, bold assertion, and vehement denunciation, to carry the public judgment by storm, they will, in my humble opinion, find themselves wofully deceived. The public mind is, at this moment, calm, self-balanced, scrutinizing, inquisitive, and instead of mere assertion and vague denunciation, it will require reason, argument, proof.

It is in this spirit, Mr. President, that I shall proceed to the examination of the objection which has been made to the proposition under consideration, on the ground that it demands an act to be done which is forbidden by the constitution. What, sir, is the argument of gentlemen on this subject, so far as argument has been attempted? It is, that as the constitution requires that "each House shall keep a journal of its proceedings," an entry once made upon that journal can never thereafter be, in any manner, touched, altered, or removed—that if we do so, we fail, from that moment, in the language of the constitution, to "keep a journal of our proceedings." The connexion between the premises and the conclusion in this reasoning, is, I must confess, Mr. President, to my mind incomprehensible. If this body shall, by a formal resolution entered on its journal, direct a previous entry, improvidently, wrongfully, or erroneously made, to be corrected or removed, does it follow from thence that we do not still keep a journal? On the contrary, this very proceeding, in being entered on the journal, and embodying the whole history of the transaction, is itself a fulfilment of the

constitutional injunction in its true and well understood sense—that of writing down, from *day to day*, our *daily* transactions as they transpire.

But it is not my intention, Mr. President, to discuss this question on the niceties of verbal criticism. I choose rather to take it up on broad views of the common sense, and practical meaning and operation of the constitution. While the constitution requires that each House shall keep a journal of its proceedings, it does not direct *how* that journal is to be kept. The manner of keeping it, what is to be put upon it, what not, the nature, the form, the fullness of the entries, are all matters left for the regulation and control of the body whose duty it is to keep the journal. In these respects, there is great diversity of usage among legislative bodies. By some the entire bill presented for its action, is spread on the journal, as was done during the two first Congresses under the present constitution by this body. By others, the title of the bill only is entered on the journal, as is now the practice both of this House and the other branch of Congress. By some, the reports of committees are entered in full on the journal, as was done by the old Congress under the articles of confederation, and is still practised, I believe, by the Legislature of Virginia. By others, the resolutions only, reported by committees, are admitted to a place on the journal. According to the rules and practice of some legislative bodies, as, for example, of this, proceedings in committee of the whole are entered on the journal; while in others, as in the House of Representatives, no notice whatever appears on the journal of what has been done in committee of the whole. I might mention, also, as illustrating the discretionary powers which every legislative body possesses over its journal, the apparently anomalous practice, founded, however, on long usage, of both this House and the other, to enter on their respective journals the messages of the President, though not forming a part of their own "proceedings," of which only they are required to keep a journal.

It results from these considerations that, although each House of Congress is bound to keep a journal of its proceedings, yet that journal, as to the manner of keeping it, the nature and character of its contents, what is to be upon it, what not, is necessarily subjected to the control of the body whose duty it is to keep it. This control is an inseparable part of that *self governing* power, in all matters of interior economy and parliamentary *regime*, which the constitution expressly delegates to either branch of the legislative department. *Each House*, by the constitution, is "to choose its own Speaker or President, and other officers."—"*Each House*, also, shall be the judge of the elections, returns, and qualifications of its own members"—"*Each House* may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member."—"Each House shall keep a journal of its proceedings, and, from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy." In regard to all these powers and functions, a very large discretion is necessarily left to either House, in the exercise of which abuses doubtless may be committed. But the *possibility* of abuse is no argument against the existence of a power. Congress has, by express and unequivocal grant in the constitution, power "to lay and collect taxes," &c. and "to raise and support armies." In the exercise of these powers, Congress might raise, even in time of profound peace, an army of half a million of men, and levy upon the people annually two or three hundred millions of dollars for their support, converting one half of the nation into soldiers, and the other half into paupers. There could be no grosser abuse; and yet the constitutional power would still be indisputable. Where it has been deemed necessary and proper, for the public good, to vest any particular power in the Government, or a department of it, the constitution grants the power, and provides securities against its abuse in the structure and organization of the Government itself. The periodical election of the public functionaries by the people, and for the most part for short terms, their responsibility to their constituents, and the constant influence and control of public opinion, are relied upon in our system as conferring every reasonable security against the gross abuse of necessary powers.

The large discretionary power which the constitution has left to either House of Congress over its journals, is strikingly exemplified in the provision respecting their publication. Each House is required by the constitution to publish its journal from *time to time*, excepting such parts as may, *in their judgment*, require secresy. Now, under the terms of this provision, either House of Congress, if disposed to abuse the trust reposed in them, might suppress and withhold from the knowledge of the people the most important part, if not the whole of their proceedings, under the plea that they were such as, in their judgment, required secresy.

In the jealous apprehensions which were entertained at the time of the adoption of the constitution, of the encroachments and abuses of the new Government, this objection was strongly urged against the clause in question; but it was replied, and with success, that every legislative body must have the power of concealing important transactions, the publication of which might compromise the public interests; and as it was impossible to foresee and enumerate all the cases in which such concealment might be necessary, they should be left to the sound discretion of the body itself, subject to the constitutional responsibility of members and the other securities provided by the constitution against the abuse of power. These securities have hitherto been found sufficient, and, in point of fact, the journals of both Houses have been published from day to day, with such special and limited exceptions as have been universally approved by the public judgment.

This publication, when made, is the practica fulfilment and consummation of the design of the constitution in requiring a journal to be kept, by either House, of its proceedings. It is agreed on all hands, that the great object for which a journal is required to be kept, is to give authentic information to our constituents of our proceedings and that information is to be given, as the consti;

tution provides, by means of a publication, from time to time, of the journal itself. The requisition to *keep* a journal, on which gentlemen have laid so much stress, is therefore merely introductory, or what the lawyers call matter of *inducement* only, to that which forms the life and substance of the provision, to wit: the *publication*, from time to time, of the journal. The whole structure and sequence of the sentence sustains this interpretation. "Each House shall keep a journal of its proceedings, and, from time to time, *publish* the same." It is evident that the whole practical virtue and effect of the provision is in the latter member of the sentence, and that the former would have been implied and comprehended in it, though not expressed. It will be seen, that the corresponding provision in the articles of confederation was founded explicitly on this idea; for, presupposing the keeping of a journal as a matter of course, it proceeded at once to require that "Congress shall publish the journal of their proceedings monthly, excepting such parts thereof relating to treaties, alliances, or military operations, as, in their judgment, require secrecy."

Nothing was said of *keeping* a journal, that being presupposed, and necessarily implied; but can any one doubt, though the articles of confederation were silent as to keeping a journal, that Congress was as much bound to keep a journal of their proceedings under that instrument, as each House is now bound to do under the existing constitution? How could they make the required monthly publication of their journal, unless a journal were kept by them? The requisition, therefore, in the present constitution to keep a journal, is but an expression, for the sake of greater fullness, of what would otherwise have been implied, and serves only as a more formal introduction to the practical end and substance of the constitutional provision on the subject, and that with which it emphatically concludes, to wit: *the publication* from time to time of the journal. That publication once made, and the people put in possession of the authentic evidence of the proceedings of their agents, the purposes of the constitution are fulfilled, and the preservation of the original manuscript journal become thenceforward an official formality.*

Even if the true and only meaning of the requisition to *keep* a journal were that which has been so much insisted on, that is, to *preserve*, do not gentleman perceive that the preservation of the journal is fully and most surely accomplished in its publication? The thousand and ten copies which the Secretary has told us are regularly printed and distributed by order of the Senate to the members of Congress, to the various public functionaries, to the State Governments, to public institutions and societies throughout the Union, furnish a far better security for the preservation of the journal than the most scrupulous care and vestal guardianship of the original manuscript; which, in spite of every precaution, might yet be lost or destroyed by inevitable accident. These multiplied printed copies, while placing the preservation of the journal beyond the reach of contingency, are, at the same time, for every practical public use, whether of legal evidence or political accountability, on a footing of equal validity with the manuscript original.

The numerous parliamentary precedents in England, as to the power of legislative bodies over their journals, are not denied; but it is contended that those precedents should have no weight here, because the constitution of the United States expressly requires that each House of Congress shall keep a journal; while, in England, it is said, no such requisition exists in regard to either House of Parliament. The requisition in the constitution of the United States, I have already shown, is but declaratory of the natural and pre-existing law of all legislative bodies, of whose organization and functions it is a necessary and invariable incident to keep a journal of their proceedings; and in this view I am borne out not only by the example of the articles of confederation, but by that of several of the State constitutions, which, presupposing the *keeping* of a journal as a matter of course, provide only, after the manner of the articles of confederation, for the periodical *publication* of it from time to time. But, without dwelling further on this view of the matter, it is altogether a mistake to say that there is no positive requisition that either House of Parliament in England shall keep a journal of their proceedings. I find the classic historian of that country stating that, in 1607, when the nascent pretensions of the Stuarts, and the spirit of the age, first made the House of Commons sensible both of its importance and responsibility as a guardian of the public liberty, that body entered a formal order for "the regular *keeping* of their journals." Subsequently, in 1621, as I learn from another authority not less authentic, (Hatsell,) an entry was made in the journal of the House of Commons, on the motion of Sir Edward Sackville, in these words: "That all our *proceedings* may be entered here, and *kept* as records." Now, sir, it is very remarkable that these two orders of the House of Commons contain the identical language of the constitution of the United States, to wit: that a journal shall be *kept* of their *proceedings*. In each of them, the magic word to keep, which seems to have exerted so potent a spell on the imaginations of gentlemen, is found; and yet we know it has never been held to be a violation of, or inconsistent, with this order to *keep* a journal of their *proceedings* for the House of Commons, in certain

*It is a remarkable fact, that there is no original manuscript journal of the House of Representatives in existence from the date of the adoption of the constitution to the first session of the 18th Congress, 1823, '24. As soon as the journal was printed and published, it was supposed there was no longer any practical motive for retaining the original manuscript journal, which was, therefore, never taken care of, or preserved. Such was the practice during the whole period of the clerkship of the celebrated John Beckley, than whom there never was a more accomplished clerk, and but few abler men; and if there be propriety in the maxim, *cuilibet in sua arte credendum est*, such a practical construction of the constitution, in this regard, by a man so conversant with his business, must be admitted to be entitled to no slight consideration.

cases, to apply an effectual corrective to wrongful or improvident entries previously made in it. It may be said, however, that this order, being made by the body itself, is not obligatory on its own action. To this, I reply, that the rules prescribed by parliamentary bodies for their Government, are always binding upon them, till rescinded or repealed; and while a rule or order is retained, nothing inconsistent with it can be done, unless the rule be first suspended by a vote of the body. Such is the invariable practice, both of this and the other House of Congress, as of legislative bodies elsewhere.

But this matter stands on yet higher ground. An act of Parliament, which all will admit is binding on the respective Houses, and which neither House can repeal or control by its separate action, virtually requires a journal to be kept by the House of Commons, in requiring certain entries to be made in it. I refer to the statute of 6 Henry VIII, which provides, "that the license for members departing from their service, shall be entered of record in the book of the clerk of the Parliament, appointed, or to be appointed for the Commons' House." The book of the clerk for the Commons' House, here referred to, and in which certain things are required to be entered *of record*, is of course the journal of the House. But how can these entries be made in the journal, unless a journal be kept. This act of Parliament, therefore, requires, and virtually commands the keeping of a journal by the House of Commons; just as the articles of confederation, already referred to, in providing that Congress "shall publish the journal of its proceedings monthly," virtually requires Congress to keep a journal; for otherwise, the required publication could not take place.

The distinction, therefore, which has been relied upon to justify the rejection of the British precedents on this subject, is not founded in a just view of the constitutional or parliamentary history of that country. The two Houses of Parliament are, in fact, bound and required to keep a journal of their proceedings, as well as the two Houses of Congress. They are bound to do so by the very nature of their institution, by their own rules and orders, and by the virtual command of act of Parliament. If, therefore, a similarity, or community of principle could, in any case, justify arguing from the institutions and usages of the one country, to those of the other, it is certainly upon a question like the present. I find that much use was made on another and recent occasion in this body, of British parliamentary precedents, by gentlemen who seem now inclined to disavow and reject them altogether. If I am not mistaken, the Senator from South Carolina, (Mr. Calhoun,) on the question which was so earnestly and ably debated here recently, as to the right of either House to refuse to *receive* a petition, introduced Hatsell's work, the great repository of British parliamentary precedents, and drew largely from it in support of the position he maintained, that it would be no violation of the right of petitioning, as guarantied by the constitution, to refuse to receive a petition after presentation.

Mr. CALHOUN here explained, and was understood to say that gentlemen on the other side of the question in that discussion, had referred to the English laws and doctrines, on the subject of the right of petition, and that he made use of the parliamentary precedents from Hatsell, to show that, in the British parliamentary practice, it was held no violation of the right of petition, to refuse to receive a petition.

Mr. Rives said he had not had the pleasure of hearing the speech of the gentleman from South Carolina, but he inferred from reading it, that he considered the parliamentary practice of Great Britain as, at least, high authority in reference to the question then under discussion. I am not at all disposed, said Mr. R., to question the propriety of the application then made by the Senator from South Carolina, of precedents from the English parliamentary practice. I mean only to say, that however applicable they may have been on that occasion, they are, at least, as much so on the present.

The precedents in the British parliamentary practice, (which, it must be admitted, has furnished the model, and, to a great extent, the law of the proceedings of our legislative bodies here, and in every State of the Union,) are, on the subject now under consideration, full, unequivocal, and conclusive. Some of them have been mentioned on this floor, and are familiar to the minds of gentlemen. I will not repeat them; but there are two cases, which, I believe, have not attracted the notice of gentlemen, and which, from the peculiar grounds on which they stand, illustrate so forcibly the high supervisory and controlling power of parliamentary bodies over their journals, that I will take the liberty of detaining the Senate a few moments with their recital. In 1668, Skinner, an English merchant, presented a petition to the King, complaining of various wrongs and outrages he had sustained from the East India company. The matter was considered not cognizable by the ordinary tribunals, and was referred by the King to the House of Lords. Strong objections were urged to the jurisdiction of the House of Lords; but they, nevertheless, took cognizance of the affair, and finally entered a judgment in favor of Skinner, against the East India company, for £5,000 damages. This proceeding was immediately and earnestly resisted by the House of Commons, as contrary to the law of the land, and an invasion of the rights of the people. A violent and protracted controversy ensued between the two Houses; and the Lords being compelled, at last, after a struggle of eighteen months, and repeated prorogations of both Houses, to yield their claim of jurisdiction, they *expunged* from their journal the judgment they had entered in favor of Skinner against the East India company, and the whole of their proceedings connected with it; whereupon the Commons, in like manner, *expunged* from their journal the various resolutions and proceedings they had adopted. In this instance, we see a proceeding even of a judicial character, under which private rights might be claimed, *expunged*, in virtue of the high discretionary authority of parliamentary bodies over their journals; and in *such a case*, perhaps, the expunction is admissible, mainly on the ground that the obnoxious proceeding took place in the exercise of an *illegal* jurisdiction, at last admitted to be such, and intended to be renounced, as in fact

was finally abandoned, by the act of *expunging* the judgment, which was its fruit.

The other case to which I have alluded, occurred in the proceedings on the recognition bill in 1690. A clause was introduced into that bill, on the motion of the Whig party of that day, and the friends of the revolution, declaring that the acts of the convention Parliament, though assembled without the formality of a royal summons, were good and valid. This was strongly objected to by the tory lords; a number of whom, by the leave of the House, entered their *protest* against it on the journal.

The Senate well know that it is a distinctive and fundamental principle in the constitution of the House of Lords, that any member or number of members, dissenting from a measure which has passed that body, have the *right*, with the leave of the House, to enter a formal *protest* against it on the journal. In this case, the leave of the House was granted. The right of the protesting lords became thereby vested and complete; and yet it appearing, on a subsequent examination of the *protest*, that the grounds of objection taken in it, assailed, and were subversive of, the principles of the revolution, and settlement of the Government just accomplished, the House ordered it to be *expunged* from their journal; which order was carried into execution, and gave rise to another *protest* for expunging the former *protest*.

But the precedents of parliamentary expunging are by no means confined to the land of our ancestors, from which we derive the model of our parliamentary institutions and proceedings. Similar instances have occurred in our own country, both before and since our revolution, subsequent, as well as previous, to the adoption of our present federal constitution, both in the State and in the national Legislatures. There is a case in the history of my own State, which, as there appears to have been singular misconceptions about it, the Senate will excuse me for mentioning somewhat in detail. I refer to the expunging of a resolution of Mr. Henry, which took place in the House of Burgesses of Virginia in 1765. This transaction has been referred to as an odious and abortive attempt at expunging made by the *King's party* in the House of Burgesses, which was *defeated* by the energy and talents of Mr. Henry. Such, sir, are not the facts, as transmitted to us by the most unquestionable cotemporary testimony. The attempt to *expunge* was not defeated. The proposition, on the contrary, was carried. It was carried, not by an odious *King's party*, but with the concurrence, as we are authorized to believe from the only account extant of the transaction, of men who were, and who proved themselves to be among the brightest champions of American freedom and independence—such men as Peyton Randolph, the President of the first American Congress; George Wythe, Edmund Pendleton, Richard Bland, Richard Henry Lee, all of whom, afterwards put their hands to the declaration of American independence, or bore a conspicuous part in the deliberations which led to and established it. The circumstances were these: Mr. Henry moved a series of resolutions, five in number, declaratory of the rights of the colonists. The four first of these resolutions merely re-affirmed what had been earnestly asserted, only six months before, by the House of Burgesses in three several documents of the most solemn character: an address to the King, a memorial to the House of Lords, and a remonstrance to the Commons. The fifth resolution, however, went somewhat further, and seemed to tender at once an issue of force with the mother country. These resolutions were opposed by Messrs. Randolph, Bland, Pendleton, Wythe, and other gentlemen, as devoted and firm friends of the rights of America as any of the great statesmen and patriots of that day, but who deemed Mr. Henry's resolutions inexpedient at that moment, inasmuch as the sentiments and principles they contained had already and very recently been expressed in other proceedings, to which the expected answers from the government in England were not yet received. The fifth resolution was deemed especially inexpedient in the then feeble and defenceless condition of the colony, as it might provoke a conflict of force, for which time and forecast were necessary to prepare. The resolutions, however, under a powerful display of Mr. Henry's eloquence, were passed by one or two votes only; but on the following day, on a motion made for that purpose, and carried, the fifth resolution was expunged from the Journal. These are the facts as vouched by the testimony of Mr. Jefferson, and the elder Judge Carrington, (both witnesses of the transaction,) and as recorded by the eloquent biographer of Mr. Henry himself. There was then, no odious and abortive *attempt* to expunge, made by a *King's party*, in the House of Burgesses. The attempt was not *defeated*, as has been said; on the contrary, the proposition to expunge was *carried*—and carried, as we are authorized to believe, by the only authentic account which has reached us of the transaction, by the influence and with the concurrence of high-souled American patriots; of Peyton Randolph, president of the first Congress; Richard Bland, one of the chosen delegates of Virginia, to that glorious assembly; Edmund Pendleton, another delegate; and George Wythe, whose name stands proudly at the head of the Virginia signatures to the Declaration of Independence. The two last named gentlemen, Mr. Pendleton and Mr. Wythe, afterwards and for a long period, respectively presided in and adorned the highest courts of law and equity in the State; and it will be no disparagement, I humbly conceive, to the pretensions of the highest here, to say, that they understood as well, and felt as religiously, the sanctity of a *record*, as any gentleman on this floor.

Examples of the like character have occurred in the other States. In the Senate of Massachusetts, as is well known, a few years after the close of the late war with Great Britain, a resolution was triumphantly carried for *expunging* from its Journal, the anti-American sentiment which the baleful spirit of party had recorded there, in the very midst of the conflict, that it was unbecoming a moral and religious people, to rejoice in the successes of our arms. At a more recent period, some seven or eight years ago, the Senate of another highly respectable State, (Ten-

nessee,) as I learn from undoubted authority, directed a formal and important entry on its Journal to be *stricken out;* which was done in the very manner proposed by the resolution on your table, by drawing a black line around the condemned entry. But without dwelling on these instances, let us descend to cases which come more immediately home to ourselves. The case which occurred in this body in 1806, and which has been already noticed hy the Senator from Missouri, has been in vain attempted to be parried or evaded.* In that case, a formal entry made on the Journal,' in pursuance of the standing rules of the Senate, and in strict conformity to the truth of facts, as they transpired, was ordered to be *expunged,* and actually *expunged.* The entry recited the substance of two memorials presented by a member of the Senate, containing grave and criminal insinuations against the Executive, and stated also the proceeding of the Senate, which took place on their presentation. This entry, as I have already remarked, was in strict pursuance of the standing rules of the Senate, the 32d article of which expressly requires that "a brief statement of the contents of each petition, memorial, or paper, presented to the Senate, shall be inserted on the Journal;" and, in general, that "a true and accurate account of the *proceedings* of the Senate shall be entered on the Journal"—Now, sir, how is the force of this precedent in the annals of our own body attempted to be parried? Why, sir, by the circumstance that the order for *expunging* the obnoxious entry, was adopted on the same day (the last of the session) that the entry itself was made, it being contended that the Journal is not complete, till it is read over in the Senate, as it usually is, the following morning, for the purpose of correcting any mistakes which may have been made in it; and that, till that ceremony has been gone through, it is under the perfect control of the Senate, and fully open to revision and correction. This is the argument of the honorable Senator from Louisiana, (Mr. Porter.) It is obvious to remark upon it, in the first place, that it confounds two things entirely distinct in their nature, and wholly different in the principles on which they rest—the correction of *mistakes* in a Journal, and the *expunging* of matter therefrom, in which there has been no *mistake*, but which is otherwise and intrinsically objectionable. The purpose for which the Journals ordinarily read over in the morning, after it is made up by the Secretary, is simply to correct any *mistakes* which may have been made in the entries upon it. This is explicitly declared by the standing rules of the Senate, the very first of which provides that the "President having taken the chair, and a quorum being present, the Journal of the preceding day shall be read, to *the end that any mistake shall be corrected that shall be made in the entries.*"

Now, sir, in the precedent of 1806, there was no *mistake* in the entry which was ordered to be expunged. It recited *truely,* and in compliance with a positive injunction of the rules of the Senate, the substance of the memorials presented, and the *proceeding* of the Senate on their presentation. There was and could be no allegation of any *error* in these respects. The entry was ordered to be expunged, not because of any *mistake* in it, but because the *matter* of it was unjust and wrong; because it went to criminate the Executive administration of the country, without proof or probability; and for that reason, ought not to stand upon the Journal of a co-ordinate department. It is in vain, therefore, to endeavor to resolve the precedent of 1806, into the ordinary power of revising and correcting the Journal, before it is finally made up. It was a far different thing. It was no process of correcting *mistakes* in entries on the Journal, which is ordinarily done the morning after the entries are made, and without the formality of an order or resolution. It was the exercise on the part of this body, of a higher and more important power—a power not to correct mistake, (for there was none,) but to redress wrong—to purge its Journal—not of erroneous entries, but of improper matter, in the entry of which there had been no error or mistake; a power which, from the nature of it, and the

*In that case, the following are the facts: On the 21st day of April, 1806, being the last day of the session, Mr. Adams presented two memorials, which are thus noticed on the Journal:

"Mr. Adams communicated two memorials, one from Samuel G. Ogden, and the other from Wm. S. Smith, stating that they are under a criminal prosecution, for certain proceedings, into which they were led by the circumstance that their purpose was fully known to, and approved by the Executive Government of the United States; that, on this prosecution, they have been treated by the Judge of the District Court of the United States at New York, Mathias B. Talmadge, Esq, in such a manner, that the same grand jury which found the bills against them, made a presentment against the Judge himself, for his conduct in taking the examination and deposition of the said Samuel G. Ogden. And the memorialists, considering Congress as the only power competent to relieve them, submit their case to the wisdom of Congress, and pray such relief as the laws and constitution of this country, and the wisdom and goodness of Congress, may afford them; and the memorials were read, and,

On motion,

Ordered, That the memorialists have leave to withdraw their memorials respectively."

These memorials appear to have been presented in the morning.. After disposing of them, and a variety of other business, the Senate took a recess, and met again at 5 o'clock, P. M. The very last entry on the Journal of the evening session is the following order, adopted on ayes and noes, for *expunging* every thing in the Journal relative to the aforesaid memorials:

"On motion, that every thing in the Journal relative to the memorials of S. G. Ogden and Wm. S. Smith, be expunged therefrom," it passed in the affirmative. YEAS: Messrs. Adair, Condict, Gilman, Kitchel, Logan, Mitchell, Smith of Md. Smith of N. Y. Stone, Thruston, Worthington, and Wright—13. NAYS: Messrs. Adams, Baldwin, Hillhouse, Pickering, Plumer, Smith of Ohio, Tracy, and White 8."

principles on which it is founded, must exist in as full force the next *year*, as the next *morning* after the objectionable entry has been made.

No ingenuity, Mr. President, however great, no effort of mind, however gigantic, can ever succeed in the attempt which is made to reconcile the Senatorial precedent of 1806, with the doctrines of gentlemen who oppose the resolution now under consideration. On what, sir, is their whole argument built? Is it not the assumption that each House of Congress, in being required to "keep a journal of their proceedings," is bound to *preserve* to all future time the record of *each and all* of their proceedings; that every act or proceeding of either House should be entered on the journal, and once *truly* entered there, that entry can never thereafter be touched, altered or removed, but must remain as it is, without the change of a letter or a comma, to the "last syllable of recorded time." Now, sir, can it be contended, that the presentation of the memorials of Messrs. Smith and Ogden by a member of the Senate, the reading of those memorials, the action taken upon them by the Senate, were not *proceedings* of which the constitution requires a journal to be kept? We have already seen that the rules of the Senate, adopted for the purpose of fulfilling the injunction of the constitution, expressly require all these things to be entered on the journal. Can it be pretended that these matters were not *truly* entered? By no means! In every possible aspect, even, in which the proceeding of this body in 1806 can be viewed, it utterly prostrates the whole fabric of *technical* refinement on which the arguments of gentlemen against the power to *expunge* have been raised.

A case of expunging, involving precisely the same principle and leading to the same consequence, occurred in the House of Representatives not many years ago. On the 25th of February, 1822, Mr. Randolph, of Virginia, being informed that Mr. Pinckney had just died in this city, (where he then was,) rose and announced the event to the House, with the impressive eloquence which the loss of such a man naturally drew from a genius of kindred inspiration, and moved an immediate adjournment of the House. It afterwards appeared that Mr. Pinckney was not dead at the time that Mr. Randolph communicated the event to the House, though he died some few hours after. The fact, however, of Mr. Randolph's having announced the event, and the consequent adjournment of the House, were necessarily entered on the journal as a part of its proceedings; and the following day, Mr. Randolph, after an explanation of the circumstances, moved that the entry on the journal of the preceding day should be *expunged*, which was ordered, and accordingly done. Now, sir, if the extreme, and I might well call it, superstitious strictness which is now inculcated in regard to the sanctity and inviolability of entries once made on our journals had prevailed then, this expunction, however simple and proper in itself, could not have been made. It will be remarked that there was no *mistake* in the entry made on the journal. The entry was not of Mr. Pinckney's death, but of *the fact that Mr. Randolph on a given day announced to the House* that Mr. P. was dead, and then moved an adjournment. That fact was truly entered, precisely as it occurred. If there had been a *mistake* in the entry, the motion would have been the ordinary one, to *correct*, and not the extraordinary one, to *expunge* it. If, moreover, the doctrine now so earnestly contended for by gentlemen were well founded, that a transaction or proceeding in either House once truly entered on its journal, the entry must stand there to all future time, and cannot be touched or changed in a letter or a comma, without a violation of the constitution, then Mr. Randolph, instead of the short and obvious remedy of an expunction of the entry of the preceding day, could have constitutionally attained his object only by a distinct entry of his explanation on the journal of the succeeding day.

But, sir, the Senator from Louisiana, even conceding the power of each House over entries previously made on its journal, contends that this power is limited to the *current* Congress, and that the Senate or House of Representatives of a succeeding Congress has no control whatever over the journal of the Senate or House of Representatives of a preceding Congress. Without stopping to show that this argument, even if correct in its principle, would be wholly inapplicable to the Senate, which, from the successive partial renewals of its members (one third of the whole being replaced by new elections every second year,) is a perpetual body, I choose rather to meet the principle of the objection at once by demonstrating its utter incompatibility with the nature of the legislative trust. It is a fundamental principle in regard to legislative bodies that, in their ordained succession by virtue of periodical elections, one Legislature has precisely as much and the same power as another; a law enacted by one Legislature, or in one session of a Legislature, may be repealed by another or during a subsequent session. What one resolves, another may rescind; and in like manner and on the same principle, one Legislature has as much and the same power over the Legislative records as another. In this respect, there is an obvious and important distinction between Legislative and Judicial bodies; a supposed analogy in whose functions and proceedings has, doubtless, misled the honorable Senator. After the adjournment or close of the term of a court, its proceedings, its orders, its judgments, its decrees, are final and irrevocable, so far as depends on its own action. It has no power, as legislative bodies have, at a subsequent term or session, to revoke, change or set aside any thing done by it at a preceding term or session. If error has been committed, that error can be corrected after the expiration of the term only by a higher tribunal, and certain limitations of time are prescribed within which even these appeals to higher tribunals must be prosecuted. So imperative is the maxim "*interest reipublicæ ut sit finis litium*," the public repose requires a limit to be fixed to judicial controversies. The nature of the legislative trust, however, being altogether different, and requiring that the exercise and expression of the public will should be, at all times, unfettered in matters of general concern, every Legislature, or session of a Legislature, has an unlimited control over the acts, proceedings, or resolutions of a preceding Legislature or session.

Gentlemen have been misled, as it seems to me, through the whole course of this discussion, by a supposed analogy between legislative and judicial proceedings, when, in fact, none exists. Either from the force of professional habits, or from a hasty consideration of the subject, we have heard legislative journals and judicial records constantly confounded, when no two things can be more distinct. The security of private rights, titles to property, real and personal, repose on the judicial records of the country; and hence those records are everywhere guarded by proper penal enactments, against unauthorized interference, or any alteration whatever. But in regard to legislative journals, while they are necessarily confided to the sound discretion of the respective bodies whose duty it is to keep them, private rights and the security of property can never depend upon them. Important rights and interests may sometimes be claimed or acquired, I know, under legislative acts; but those acts, if laws, are never spread upon the journal; or if joint resolutions, they are enrolled and preserved, like the laws, out of, and independently of, the journal; and both are included in annual and authorized publications of the acts of Congress, which are received in evidence in all the courts, without further proof of authenticity.

Dismissing for the present, Mr. President, the authority of precedents, there are cases in which, upon the mere reason of the thing, I think all would agree that the right of this body to expunge an entry from its journal would be unquestionable. The constitution requires each House to keep a journal of its "*proceedings;*" that is, I presume, its proceedings as a constitutional body, acting in discharge of its appropriate constitutional functions. On this point, I beg leave to read a passage from Mr. Jefferson's Manual, the authority which especially governs our proceedings in this body; a passage which seems to me to have an important bearing on the question we have been considering.

He says, "Where the constitution authorizes each House to determine the rules of its *proceedings*, it must mean in those cases, legislative, executive, or judiciary, submitted to them by the constitution, or in something relating to these, and necessary towards their execution. But orders and resolutions are sometimes *entered in the journals* having no relation to these, such as acceptances of invitations to attend orations, to take part in processions, &c. These must be understood to be *merely conventional* among those who are willing to participate in the ceremony, and are, therefore, perhaps *improperly placed among the records of the House.*"

The result of this, as it seems to me, very clear and just distinction is, that nothing is to be regarded as properly a *proceeding* of either House, of which a record is required to be *kept*, but such acts as are done in discharge of the legislative, executive, or judicial functions respectively committed to them by the constitution. If any act be done by either House, not appertaining to the discharge of its constitutional functions, that act ought to be considered as extra-official, or, as Mr. Jefferson expresses it, as merely *conventional* among the members participating in it; consequently, not as a *proceeding* of the *body* to be entered on the journal, and if *improperly placed* there, may be, and ought to be, taken off. With this distinction as my guide, let me suppose a case. Let us suppose that this body, imitating the irregular practice which has obtained in some of the State Legislatures, should, while still organized as a Senate, proceed to the nomination of a President of the United States: let us suppose that the very resolution which is now proposed to be expunged had been used, as it well might, as a preamble to such a nomination: let us suppose that the President had been in his first term, and then the preamble and nomination would have run thus—"Whereas Andrew Jackson, 'the President of the United States, has, in the late Executive proceedings in relation to the public revenue, assumed upon himself authority and power not conferred by the constitution and laws, but in derogation of both,' and has thereby proved himself unworthy of the confidence of a free people: Resolved, therefore, as the opinion of the Senate, that —— —— be, and is hereby, recommended to the good people of the United States, as the most fit and proper person to replace the said Andrew Jackson in the office of President," &c.

Suppose, Mr. President, that such a resolution had been adopted by the Senate, organized as it is at this moment, yourself in the chair, all the Senators in their seats, the Secretary at his table, the yeas and nays called upon it, and the resolution finally entered on the journal; could such a resolution, notwithstanding all the Senatorial forms which might have accompanied it, be considered as a *proceeding* of the *Senate* within the meaning of the constitution? Can any one doubt that there would be full authority in this body, when it should see the error and evil tendency of its act, to *expunge* such a resolution from its journal? If so, the question of *power* is settled; and the propriety only of its exercise would then depend upon a question, which I will not anticipate the discussion of, but which it may be well to suggest for the consideration of gentlemen, whether the resolution actually adopted on the occasion referred to, had more relation to the functions, legislative, executive, or judiciary, entrusted by the constitution to this body, than the resolution supposed, would have had.

While, therefore, Mr. President, I cannot doubt that there are cases in which an entry improperly placed upon our journals may be removed or expunged therefrom by actual erasure or obliteration, it must yet be borne in mind that no such obliteration or erasure is contemplated or required by the resolution now under consideration. It contemplates a *moral*, not a *physical* expunction; an expunction of the *act*, without expunging the *record*. It seeks to deprive that *act* of all legal force and validity by applying to it the appropriate and significant language of parliamentary condemnation; and without erasing or obliterating the original entry of it on the journal, to affix to that entry a visible mark, which shall show, in all time, that the act there recorded had been revoked, annulled, and repudiated by the solemn judgment of the Senate and the nation; so that if in any future search for precedent, the act be found, its condemnation be found inseparably as-

sociated with it. That this is the meaning and intention of the resolution, is shown by its own express declaration. But it is objected that, in that sense, the *term* expunged cannot be properly used. The question, then, becomes one of mere verbal criticism; and surely gentlemen will admit that it is the privilege of public bodies, as well as private individuals, to *define* the sense in which they use terms susceptible of a difference of signification. This is explicitly done by the resolution under consideration, and all objections founded on the assumption of a meaning, different from that in which the resolution interprets and defines its own language, must, of necessity, fall to the ground. But I willingly meet gentlemen on the question they have made, and maintain that the use of the word *expunge*, in the sense in which it is employed on the present occasion, is perfectly correct and consistent in itself, and justified by numerous parallel examples in the usage of language, both in juridical and parliamentary proceedings. I will call the attention of my learned collleague especially, (Mr. Leigh,) to a striking illustration furnished by the decisions of the highest courts in our own State, with which he is far more familiar than I can pretend to be. We all know, Mr. President, that in law, a deed is an instrument signed, *sealed* and delivered—that it is an essential and indispensable element in its legal character that it should be *sealed*, and that a *seal*, in the common understanding of the word, and as defined, I believe, by Lord Coke himself, is an impression made on wax or wafer; and yet the Court of Appeals in Virginia, as have more recently, I believe, the courts in a majority of the other States, decided on principles of common sense and common law, independently of any statutory provision on the subject, that a scroll or *black lines* drawn in any shape to suit the fancy of the drawer, when *declared to be intended* for a *seal*, does, in fact, constitute a *seal*, and makes the paper to which it is attached, to all intents and purposes, a *sealed* instrument. Now, sir, if *black lines* can thus be made to constitute a *seal*, a thing which, in its ordinary sense, is formed of wholly different materials, surely they may be made to stand for *expunging*, which, in its strictest and most literal sense, demands only the use of the same materials. In either case the declared intention stands in place of, and is equivalent to, the thing itself.

Again, sir, the term *cancel*, if not of precisely the same, is certainly of very analogous import, to the word *expunge*. Its etymological meaning, as well as that which is given to it in the legal definition, is to destroy a deed or other writing by drawing lines across it in the form of *lattice work*. It is a principal branch of the common law jurisdiction of the Court of Chancery in England to *cancel* letters patent, (which are records,) obtained from the King upon false suggestions, or otherwise void. In both legal and popular phraseology we speak of a deed or will (also matters of record) being *cancelled* by the decree of a court. Now, sir, in these cases, I presume the Lord Chancellor does not actually draw lines in the form of lattice work on the letters patent which he *cancels*; nor does the court run the pen across the will or deed, which is cancelled and set aside by its decision. On the contrary, it is the decision of the chancellor or the decree of the court pronouncing the patent, will, or deed, to be fraudulent and void, which, *per se*, *cancels* it; that is, destroys its legal validity and effect, while leaving the record of its material existence unimpaired. In like manner, the word *expunge*, in the present instance, exerts its whole force on the legal *act* or precedent itself, without impairing the written entry of it upon our journal.

The illustrations furnished by familiar parliamentary proceedings, are not less forcible, while they have the advantage of coming still nearer home to us. When a motion is made and carried to *strike out* a clause or section in a bill, it is not, as I understand, actually stricken out or *erased* with the pen, but the portion voted to be stricken out is indicated by suitable marks, with a corresponding notation on the margin of the bill, or on a separate paper, and is considered as *stricken* out by the mere force of the vote. What is directed to be done, is, by a parliamentary fiction, if you choose, considered as actually done. It is a singular coincidence that, in the earlier period of our parliamentary history, this very word *expunge*, which has of late furnished such a fruitful theme of commentary, was habitually used instead of the phrase to *strike out*, in reference to amendments, and in the sense in which the latter phrase has just been explained. During the two first Congresses under the present constitution, I find that in the journal of this body especially, the word *expunge* is of constant recurrence; and that in proposing amendments to bills, the motion was to expunge, instead of *strike out;* and when carried, the clause or section which was the subject of the motion, was said to be *expunged*, though, as in the case of *striking out*, there was no actual *erasure*, which it is now contended the word necessarily imports. From its frequent recurrence in the same application, in Yates's report of the proceedings of the convention which formed the constitution, we are authorized to infer, that its use in the same sense was also familiar among the learned statesmen who composed that illustrious assembly.

But there is an example of its use which I cannot forbear to mention.

In the draft of the declaration of independence, this significant word is used in the very sense which is assigned to it on the present occasion. After stating the fundamental principle of the right of the people to alter or abolish their institutions, a right, which prudence requires should not be exercised for light and transient causes, and accordingly, that all experience hath shown mankind more disposed to suffer, while evils are sufferable, than to abolish the forms to which they are accustomed, the following pregnant sentence occurs:

"Such has been the patient endurance of these colonies, and such is now the necessity which constrains them to *expunge* their former systems of government." Now, sir, as Mr. Jefferson was what Lord Clarendon, I think, called John Hampden, a *root and branch man*, he might be considered, perhaps, both in temperament and principle, as an *expunger*. It may not, therefore, be improper to add that this word stood in the declaration of independence, not only as it came from

the pen of Mr. Jefferson, but as it was reported to Congress, and sanctioned by the rest of the committee, by John Adams, Benjamin Franklin, Robert Livingston, and Roger Sherman. What, sir, did these great men and illustrious patriots mean by expunging our "former systems of government?" Did they mean that the *royal charters*, in which those systems of government existed and were delineated, were to be *erased* and *obliterated* with the pen, as modern commentators would have us believe the word *expunge* can only mean? No, sir, they meant as we mean on the present occasion, that the *institution*, the *act* should be *expunged*, leaving the record of it unimpaired.

Having thus, sir, I hope, satisfactorily established the true parliamentary sense of expunging, permit me to say something of the thing itself. Attempts have been made here and elsewhere to represent it as something very odious and iniquitous. Now sir, I take upon myself to say that, from the nature of the thing, implying necessarily a deliberate change in the public councils, it never can be resorted to in a representative government, but with the sanction, and under the authority of the people, and in their hands will never be used but for the vindication of their rights and of the principles of their fundamental law. In the history of our British ancestors, sir, it comes down to us, through a long line of glorious traditions. In that country, it has been the instrument by which every great principle of civil and political liberty has been successfully vindicated and established. How was *expunging* used, sir, in the celebrated case of John Hampden and ship-money, in 1640? We all know, sir, that in that case, the King claimed an arbitrary power to levy upon the people, at his own discretion, whatever imposition *he* might deem *necessary* for the support of the Government, and the defence of the kingdom. This enormous usurpation was sanctioned by the Judges, not merely in an extra judicial opinion irregularly obtained from them, but in their solemn judgment rendered in the Exchequer Chamber against John Hampden, for his refusal to pay the odious tribute exacted of him. These iniquitous proceedings were afterwards *expunged* in the high court of Parliament; and by that *expunction*, the great principle of free government, that the people can be taxed only with their consent given through their representatives, that principle which gave birth to our own glorious revolution, was, for the first time, successfully and irrevocably established. In the case of Skinner and the East India company, in 1669, to which I have heretofore referred, what was the great principle involved? In addition to that ultimate appellate jurisdiction in questions of law, of which the House of Lords in England has been long possessed, it claimed on that occasion, cognizance of original suits in utter subversion of the trial by jury. By being forced at last, by the noble resistance of the House of Commons, to *expunge* the judgment they had pronounced and their other proceeding in that memorable case, they renounced, finally, this dangerous claim of original jurisdiction, and the glorious institution of our Anglo Saxon ancestors, the great bulwark of British and American freedom, the trial by jury, was thus triumphantly rescued and maintained.

In the case of the protest of the tory lords in 1690, to which I have also had occasion to refer, the principle involved and finally vindicated by this odious process of *expunging*, was even of a deeper and more vital character. The Senate will recollect that the clause in the recognition bill, to which the tory lords objected, and against which they entered their protest, was one asserting the validity of the acts of the convention Parliament—that Parliament, under whose auspices the glorious revolution of 1688 had just been achieved. The tory lords were unwilling to recognize the validity of its acts, because it was called together, in the emergency of a great crisis, by the voice of the nation itself, speaking in the person of the Prince of Orange, and without the formality of the King's writ, which these lords held was indispensable, under all circumstances, to constitute a lawful Parliament. This objection, formally recorded in their protest, struck at the vital principle of the revolution which had just been accomplished—the sovereign right of the people to alter or abolish their institutions without a slavish submission to pre-existing forms. The House, therefore, ordered their protest, which had been regularly entered on the journal, to be *expunged*, and in doing so, worthily vindicated the vital principle of the right of the people to change, modify, or abolish their institutions, whenever it shall seem to them good, a principle which stands in the very front of the declaration of American independence, and is even more essential to American than British liberty.

The case of the Middlesex election, which gave rise to another instance of expunging in 1782, is perfectly familiar to the minds of the Senate. There the great right of the people freely to choose their own representatives, was vindicated and established by *expunging* a resolution of the House of Commons, adopted fourteen years ago, and which was justly described as "subversive of the rights of the whole body of electors in the kingdom." We have seen, then, this denounced and calumniated process of *expunging*, through two centuries of British freedom, used as the efficacious instrument by which every great constitutional right, every cardinal principle of popular liberty dear to the hearts of freemen, has been successfully vindicated and redeemed—in 1640, the right of the people to be taxed only with their own consent—in 1769, the right to jury trial in 1690, that right, which is the mother of all others, the right of the people to organize, modify, or abolish their political institutions at their own pleasure—in 1682, that right, which forms the practical security for the rest, the right of the people freely to choose their own representatives. In view of these facts, it is no exaggeration to say that every cardinal principle of British and American freedom has, at one period or another, been vindicated and established by this remedial, but calumniated process of expunging.

I have already remarked, Mr. President, that this remedy for the abuse of delegated power can never be resorted to, in a representative government, but with the deliberate sanction, and under the formal authority, of the people. *Expunging* is, in fact, the embodied and potential voice of the people, bursting, by its legitimate power, the

doors of legislative assemblies, and correcting, in the most solemn form, the deviations and assumptions of their servants. It necessarily implies a change in the public councils by the operation of the public will; for the body, which has committed an error or been guilty of an usurpation, remaining constituted as it was, will not be the willing instrument of correcting or expunging its own wrong. Accordingly, in every one of the cases which I have mentioned, the final parliamentary action has been preceded by the matured, the settled, the irreversible judgment of the public mind. In the case of Hampden and the ship-money, the proceedings which were *expunged*, took place in 1637; the expunction followed, three years after, in 1640. In the meantime, the public mind had been anxiously and intensely exercised on the subject; the question had been publicly and solemnly argued before all the Judges in the Exchequer chamber, from time to time, through a period of six months. After their decision was pronounced, the merits of that decision continued to furnish the theme of able and earnest discussion, at the bar of public opinion; and finally, the settled judgment of the nation was carried into *execution*, by the order of the high court of Parliament, for expunging the *rolls* of the obnoxious proceedings. In the case of Skinner and the East India Company, in like manner, the question between the two Houses was pending, and earnestly debated before the nation, for eighteen months; and the House of Commons was but the organ of the settled public opinion of the country, in finally wresting from the lords, the *expunction* of their dangerous and illegal proceedings. In the case of the protest of the tory lords, in 1690, the great principles involved, had been kept constantly before the public mind, by the profound interest awakened by the revolution of 1688, and the faithful and patriotic whigs of that day but acted out a deliberate and foregone conclusion in the public judgment, by *expunging* a protest which assailed the vital principle of popular sovereignty. In the case of the Middlesex election, the question had been pending before the nation for fourteen long years; during which time it had been the subject of public discussion in every possible form—popular, parliamentary and legal; in meetings of the people, in both Houses of Parliament, and incidentally before the judicial tribunals of the country. Public opinion was never more maturely formed, more fully expressed, or more faithfully represented, than in the order for *expunging* the unconstitutional and obnoxious resolution in that case.

So it is, sir, on the present occasion. It is this day precisely two years since the resolution now proposed to be expunged was adopted by this body. During the whole of that period, the public attention has been constantly recalled to it by able and eloquent debates here—by the searching discussions of the press—by the calm and self-directed inquiries of the public mind. The subject has been constantly under the consideration of the people, in one form or another. Every temporary and artificial excitement has passed by, and the public judgment has been left to its own self-balanced wisdom to pronounce on the issue joined before it. Its decision, I believe sir, has been made up, and, in great part, pronounced. Eleven of the sovereign States of this Union have spoken, and spoken authoritatively, demanding the expunction of this resolution from our journals. There can be but little hazard in saying, that four or five more desire and would approve it, though they have not yet spoken in an authoritative form, probably because they have supposed it to be unnecessary to do so. The judgment of our constituents, then, of the people and of the States, has passed on this transaction—I believe, irrevocably passed upon it. They consider the resolution adopted by this body on the 28th March, 1834, as irregular, as illegal, as unjust, as unconstitutional; and the more alarming, as proceeding from that branch of the Federal Legislature which is the most irresponsible, and as tending dangerously to increase its power, already sufficiently great. On these grounds, they demand that that resolution be expunged from our journal; and seeing not the slightest constitutional impediment to the remedial process for which they have indicated their preference, I for one, Mr. President, will cheerfully obey their voice.